

# Memorandum

Date : September 16, 2002

To : Regional Parole Administrators  
District Administrators  
Unit Supervisors  
Regional Reentry Coordinators  
Parole Case Records Administrators

Policy No. 02-11

Subject: **REVISED PROCEDURES FOR PROPOSITION 36**

This is to inform you that an agreement was reached on August, 8, 2002, between the California Department of Corrections (CDC), the Board of Prison Terms (BPT), and the California Correctional Peace Officer's Association (CCPOA) regarding the revised implementation of Proposition 36 (Prop 36). The revisions to Prop 36 procedures are extensive and are a result of meetings between the above mentioned parties.

Effective October 1, 2002, the Unit Supervisors will have the authority to decide which cases are referred to the BPT for Prop 36 disposition. Under the new procedures, the Agent of Record (AOR) will make Prop 36 referrals directly to the county assessment centers. The Parole and Community Services Division (P&CSD) is preparing a budget change proposal to request that the BPT's Prop 36 position authority be transferred to P&CSD, effective January 1, 2003. This procedural memorandum reiterates the previous law requirements that were contained in the August 27, 2001 revision to procedures and provides new details on implementing the new Prop 36 procedures. In addition, a quick reference guide is attached (Attachment A). The guide outlines and highlights the specific procedural changes and serves as an easily accessible Prop 36 referral resource.

## **DIVISION OF PROP 36 AUTHORITY BETWEEN THE BPT AND THE PAROLE AND COMMUNITY SERVICES DIVISION:**

This revised procedure changes the method for disposition of Prop 36 eligible violations for Prop 36 eligible parolees. The previous method of referring cases that fell under the "**MANDATORY VERSUS NON-MANDATORY REPORTS TO THE BPT,**" is rescinded. There is no longer a requirement to refer violations for Prop 36 disposition such as two eligible violations in a 30 day period, three eligible violations in a 90-day period, etc.

The P&CSD now has jurisdiction over the disposition of all eligible parole violations for Prop 36 eligible parolees. The previous instructions that required referrals under specific scenarios are also rescinded.

The same programs currently accessible to P&CSD, i.e., Preventing Parolee Crime Programs (PPCP), local outpatient programs and voluntary residential programs, Residential Multi-Service Centers (RMSC), Narcotics Anonymous, etc., will continue to be utilized. However, P&CSD now has the ability to make direct referrals to local

county Prop 36 assessment centers. The BPT will be notified of the direct referral (outlined below) and ultimately is responsible for affirming or denying the parolees' placement in substance abuse treatment programs.

### **HISTORY:**

On November 7, 2000, the California voters enacted Prop 36, the Substance Abuse and Crime Prevention Act of 2000. The law is codified in **Penal Code (PC) Section 3063.1** and was effective July 1, 2001.

The objective of Prop 36 is to place non-violent parolees, probationers, and defendants who are charged with a **non-violent drug possession offense(s) and/or who violate a drug-related condition(s) of parole or probation** into community substance abuse treatment programs, rather than returning them to jail or prison.

### **THE LAW:**

The law applies only to violations that occur on or after July 1, 2001. The law prohibits the BPT from suspending and/or revoking the parole of a Prop 36 eligible parolee who, after July 1, 2001, is **"initially"** charged with a non-violent drug possession offense and/or who only violates a drug-related condition of parole.

A **non-violent drug possession offense** is defined in PC Section 1210(a) and consists of the "unlawful possession, use, or transportation for personal use of any controlled substance outlined in Health and Safety (H&S) Code Sections 11054, 11055, 11056, 11057, 11058, or being under the influence of a controlled substance in violation of H&S Code Section 11550."

A **drug-related condition of parole** consists of:

- Drug-related special conditions of parole imposed on a parolee's CDC 1515A or CDC 1515B, Notice and Conditions of Parole, SPECIAL CONDITIONS.
- Parole violations that fall under the H&S Code definition of non-violent drug possession offenses as outlined in the preceding paragraph. (See Attachment B)

The term **"eligible violation(s)"** will be used instead of **"non-violent drug possession offense(s)"** and **"drug-related condition(s) of parole"** in selected sections throughout this document.

An **"ineligible violation"** is defined as an act committed by a Prop 36 eligible parolee on or after July 1, 2001, that alleges commission of any felony or misdemeanor **not related** to possession or use of drugs [PC Section 1210(d)], or violation of any non-drug related condition of parole.

The BPT may require any person on parole who qualifies under the statute and is referred to Prop 36 treatment, and who is reasonably able to do so, to contribute to the cost of his or her own placement in a drug treatment program.

Drug treatment services ordered by the BPT may not exceed 12 months, provided; however, that additional aftercare may be required for up to six months.

#### **EXCLUSIONS FROM PROP 36 ELIGIBILITY:**

Parolees who meet any of the following exclusionary criteria are not eligible for treatment services pursuant to this law:

- Parolees who have been deported or are pending deportation and in the custody of the United States Immigration and Naturalization Service (USINS). However, parolees who are released by the USINS on their own recognizance or a bond pending deportation proceedings are eligible.
- Civil Narcotic Addicts.
- Interstate Cases.
- Parolees who have ever been convicted of any offense under PC Sections 667.5(c) or 1192.7(c), whether or not the conviction resulted in a State prison sentence.
- Parolees with out-of-state, Federal, or military convictions containing the elements of California convictions that fall under PC Sections 667.5(c) or 1192.7(c).

#### **REVIEW OF PREPAROLE CASES FOR PROP 36 ELIGIBILITY AT THE REGIONAL REENTRY UNITS:**

As the Regional Reentry Unit receives preparole cases, they will be screened for Prop 36 eligibility by the reentry screeners utilizing the exclusionary criteria outlined above. The Regional Reentry Screener will note at the top of the CDC 611, Release Program Study (RPS), **"PROP 36 INELIGIBLE,"** if the case meets the exclusionary criteria and **"PROP 36 ELIGIBLE,"** if the case does not meet the exclusionary criteria. Cases that are forwarded to the field unit that inadvertently have not been screened by the regional re-entry screener, will not be referred to a parole agent I for eligibility screening.

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## **PAROLE UNIT IDENTIFICATION OF PROP 36 ELIGIBILITY AND SPECIAL CONDITIONS OF PAROLE:**

### **Preparole Cases**

When the preparole file is received at the assigned parole unit, the unit supervisor (US) will ensure the appropriate notation of, "**PROP 36 INELIGIBLE**" or "**PROP 36 ELIGIBLE**" is written on the front of the field file (in the interest of saving time, the unit may utilize the abbreviation of "P36" in lieu of spelling out "Prop 36").

If the preparole case meets the qualifying criteria for Prop 36 and it is determined that anti-narcotic testing is required, the CDC 1515B will note the requirement for anti-narcotic testing and the following special condition of parole: "**You shall participate in and successfully complete a drug treatment program or a Prop 36 county program at the direction of your parole agent or the Board of Prison Terms,**" will also be added. Parole Agents are responsible for the preparation and service of the CDC 1515B during the normal course of casework after the unit supervisor's signature is obtained.

### **Existing Parole Cases**

Existing cases that have the Special Conditions of Parole of "**Anti-Narcotic Testing**" and "**you shall participate in a drug treatment program at the direction of your parole agent,**" are sufficient to make a Prop 36 referral. Therefore, there is no requirement that existing cases be amended with the enhanced Special Conditions of Parole.

### **Court Walkovers Or Oral Release Program Studies**

There may be some instances when parole cases such as "Court Walkovers" and "Oral Release Program Studies (RPS)" are received by a parole unit for which a Prop 36 eligibility determination has not been made. In these cases the US will determine Prop 36 eligibility and impose the following special condition of parole: "**You shall participate in and successfully complete a drug treatment program or a Prop 36 county program at the direction of your parole agent or the Board of Prison Terms.**". Parole Agents are responsible for the preparation and service of the CDC 1515A and 1515B during the normal course of casework after the US signature is obtained.

### **Cases Without Previous Special Conditions of Parole**

Some parole cases were not reviewed for Prop 36 eligibility during the one-time file review conducted in 2001. When the US becomes aware that a file has no Prop 36 designation noted on the front of the field file, he/she shall review the file for eligibility and make the appropriate notation on the file. Parole agents are responsible for the preparation and service of the CDC 1515B during the normal course of casework after the US signature is obtained.

### **TWO CLASSES OF PROP 36 PAROLEES:**

Prop 36 established two distinct classes of parolees. The distinction between the classes determines how violations are adjudicated. The basic differences between the two classes of Prop 36 eligible parolees are as follows:

- Those whose Earliest Possible Release Date (EPRD) occurred **on or prior to** June 30, 2001.

If the US believes the parolee would not pose a danger to the safety of others, the case may be referred to the BPT utilizing violation package requirement No. 1. The recommendation to the BPT would be to Continue on Parole (COP) and request concurrence with placement in a Prop 36 program.

If a second Prop 36 violation occurs, and the parolee is referred to the BPT, and there is a good cause finding by the BPT, the parolee shall lose eligibility under Prop 36 and may be returned to custody, if ordered by the BPT. If the parolee is returned to custody, the parolee loses eligibility for Prop 36 treatment for the remainder of their parole.

- Those whose EPRD occurs **on or after** July 1, 2001.

If the US believes the parolee would not pose a danger to the safety of others, the case may be referred to the BPT utilizing violation package requirement No. 1 as outlined on page 8. The recommendation to the BPT would be to COP and request concurrence with placement in a Prop 36 program.

If a second Prop 36 violation occurs, and the parolee is referred to the BPT and there is a good cause finding by the BPT, the parolee shall not lose eligibility under Prop 36 and shall continue treatment.

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If a third Prop 36 violation occurs, and the parolee is referred to the BPT and there is a good cause finding by the BPT, the parolee shall lose eligibility under Prop 36 and may be returned to custody, if ordered by the BPT. If the parolee is returned to custody, the parolee loses eligibility for Prop 36 treatment for the remainder of their parole.

(All Prop 36 violations are cumulative; beginning with the initial parole date and ending with the parolee's discharge from parole.)

#### **BEHAVIOR THAT MAY SUBJECT A PAROLEE TO REVOCATION OR EXCLUSION:**

**The BPT is the only authority that can render the finding that an eligible parolee is excluded from Prop 36 consideration for the remainder of his/her parole period.** This shall be documented by a Deputy Commissioner on a BPT 1104, Summary of Revocation Decision: Screening Offer or during the revocation hearing on a BPT 1103, Summary of Revocation Hearing and Decision. A copy of this document will be forwarded to the assigned parole unit. The following shall be written in **BOLD LETTERS** on the front of the field file: **"EXCLUDED FROM PROP 36 BY THE BPT."** The previous determination of Prop 36 eligibility is to be marked over or removed.

Any parolee may be revoked on the first referral or at any time during the Prop 36 process. The case shall be referred to the BPT for a Prop 36 violation with a recommendation to revoke parole if P&CSD believes (and submits) there is evidence that establishes the parolee is a danger to the safety of others. The violation will be reported utilizing violation package requirement No. 2.

If at any point during Prop 36 treatment the treatment provider notifies P&CSD that the parolee is unamenable to the drug treatment provided, the treatment plan may be altered.

## **REPORTING VIOLATION POLICY:**

Current P&CSD policy requires the parole agent to report all arrests and violations of parole. The revised process provides that the P&CSD will determine if and when a Prop 36 eligible parolee/violation will be reported to the BPT. This new discretion places the recommended violation disposition process at the unit level between the AOR and US. There is no longer a requirement to refer violations as local discretionary decision making shall be utilized. This means the US can decide to use CDC funded or community drug treatment programs. The decision to report specific violations to the BPT, pursuant to Prop 36, shall be made by the US in accordance with California Code of Regulations, Title 15, Section 2616.

## **PC SECTION 3056 HOLDS IN CUSTODY/NOT IN CUSTODY CASES**

Under the revised Prop 36 procedures, the US has discretion over whether or not to submit qualified cases for Prop 36 treatment and seek concurrence from the BPT. In submitting Prop 36 reports, parole staff shall be expected to continue to use their discretionary decision making abilities in determining whether a parolee should be placed in custody or remain in the community. There may be cases where a parolee is ordered by the court into a Prop 36 program and the Agent of Record receives a request that the parole hold be released. If the parolee is pending revocation, then the requestor will be advised that the parole hold can not be released until the BPT has adjudicated the parole violations. If the parolee is revoked, the parolee can not be released unless the BPT rescinds this decision.

If during the six working day investigation period the US makes the decision to continue the parolee on parole and refer the parolee to Prop 36 treatment, then it is the responsibility of the AOR to remove the hold and verify that the parolee is released from custody. Prior to releasing the parole hold for Prop 36 treatment, a signature on the Prop 36 waiver is not required. The parolee's signature for the Prop 36 waiver shall be obtained following the parolee's release from custody.

When a parolee is referred to the BPT for Prop 36 treatment and the parolee is also eligible for a Substance Abuse Coordinating Agency (SASCA) funded program, the AOR should make the treatment referral to a SASCA provider rather than to the county assessment center. Determination of SASCA eligibility can be made by locating a CDC 1868 in the field file and/or receiving knowledge that the Prop 36 eligible parolee has completed an in custody substance abuse program (SAP). The AOR will confirm SASCA eligibility by contacting the local SASCA provider. (See Attachment C.)

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If SASCA funds are not available for the Prop 36 eligible parolee, then a referral to the local county assessment center will be the appropriate action for the parolee to receive Prop 36 treatment.

In the event a request for revocation has been made to the BPT, and that request is modified resulting in Prop 36 placement and removal of the hold, the AOR (US in their absence) is now responsible for removing the hold from local custody.

### **PROCESSING PROP 36 REPORTS:**

In the event the unit determines a referral to a local county Prop 36 assessment center or SASCA program is necessary, the referral must be reviewed by the BPT as the Parole Authority defined under the statute. While a parolee is receiving Prop 36 treatment, all subsequent violations, (with the exception of those violations that are mandatory BPT reports), do not have to be forwarded to the BPT for concurrence, unless the Unit Supervisor wants the violation to count as a Prop 36 violation. The referral scenarios are as follows:

#### **Eligible Violation(s)**

The P&CSD Revocation Hearing Coordinators shall be responsible for preparing a separate calendar and a BPT 1104, for screening eligible Prop 36 violations. (indicate "**PROP 36 ELIGIBLE**" on top of forms).

#### **Combination Eligible and Ineligible Violation(s)**

All parole violation packages submitted to the BPT for combination eligible and ineligible violations shall be submitted as a standard violation (revocation package).

#### **Unamenability Requests**

All requests for the BPT to find unamenability from Prop 36 shall be submitted as a standard violation report.

In the case of unamenability, the report must document the evidence supporting the noncompliant behavior by the parolee that resulted in the treatment provider determining that the parolee's placement into treatment was not appropriate. Appropriate documentation would include the treatment provider's report asserting unamenability.



If a parolee refuses to participate in Prop 36 treatment, the parolee may be revoked, however, may still retain eligibility for Prop 36 treatment upon release from prison.

### **Exclusion Requests**

All exclusion requests must be submitted on a standard violation report. The violation report must document that previous Prop 36 violations were acted upon by the BPT and that the parolee now meets the criteria for exclusion as outlined in this procedure and the law.

**1. Violation Package Requirements for parolees who are recommended to be continued on parole and placed into Prop 36 treatment shall contain the following:**

- Activity Report, CDC 1502
- Prop 36 waiver
- Legal Status Summary, CDC 188
- Parole Violation Disposition, CDC 1244
- Calendar Decision Sheet, BPT 1130
- P&CSD discretionary supporting documents, i.e., police report, lab test results

**1a. Violation Package Requirements for parolees who are recommended for placement into Prop 36 treatment, COP, and have absconded parole supervision where time loss is recommended:**

- Activity Report, CDC 1502
- Prop 36 waiver
- Legal Status Summary, CDC 188
- Parole Violation Disposition, CDC 1244
- Calendar Decision Sheet, BPT 1130
- Absconders Waiver, BPT 1102
- P&CSD discretionary supporting documents, i.e., police report, lab test results

The following information shall be included in the Activity Report, CDC 1502, when making a Prop 36 referral (see Attachment D for an example):

- Indicate that "the parolee has agreed to participate in and successfully complete Prop 36 drug treatment."

- Identify the county assessment center that the parolee is to report to and include specific reporting instructions for the parolee to follow as they relate to the specific assessment center. The reporting instructions will either consist of reporting to or making phone contact with the specific assessment center.
- The parole agent's recommendation should include the action taken on the violation as well as referring the case to the BPT. (i.e., Subject to complete treatment. Refer to BPT for approval of PC Section 3063.1 treatment. COP)

**2. Violation Package Requirement for parolees who are recommended for revocation, judged as unamenable or excluded from Prop 36, shall contain the following:**

- All necessary forms required for a standard revocation packet.

**PROP 36 WAIVER:**

The AOR will staff the Prop 36 disposition with the US. If agreed upon, the hold will be removed and the Activity Report (CDC 1502) and Prop 36 waiver will be submitted following the parolee reporting to the unit (see Attachment E for an example). The AOR will ensure that the Prop 36 waiver is completed. During the referral process, the Prop 36 waiver will accompany the completed Activity Report (CDC 1502).

**DIRECT REFERRALS OF PAROLEES TO LOCAL COUNTY PROP 36 ASSESSMENT CENTERS:**

Parolees who are eligible for Prop 36 placement and have Prop 36 eligible violations may now be referred directly to local county Prop 36 assessment centers. The completed Activity Report (CDC 1502), along with the Prop 36 waiver, will act as the appropriate referral document for these placements. In the scenario where a parolee was placed into custody, referred to the BPT and was found, by the BPT, to be eligible for Prop 36 treatment, the parole unit will ensure that the parolee receives a completed copy of the Prop 36 waiver and is instructed to appear at the appropriate assessment

center. In this scenario the Prop 36 waiver will act as the sole assessment center referral document. The parole agent is not required to provide transportation to the assessment center; however, is responsible for follow-up to ensure the agent's instructions are followed and community supervision is continued. The most current list of locations and contacts for Prop 36 county assessment centers is attached (Attachment F).

### **SUPERVISION LEVELS OF PAROLEES:**

Pursuant to P&CSD policy, a parolee's supervision level will continue to be determined by individual case factors and not by Prop 36 eligibility, referral, placement, or exclusion.

### **PROP 36 DISPOSITION AND TREATMENT:**

Once a Prop 36 referral is made to the BPT and the referral is presented to the BPT screening calendar, the BPT has five work days to render a finding. The BPT has the authority to mandate up to twelve months of substance abuse treatment with an additional six-month aftercare component. The treatment program does not have to be a residential placement. The treatment provider has 30 days to develop and submit a treatment plan to the BPT and P&CSD. The treatment plan received by P&CSD will be filed on the left side of the field file. Once the parolee is placed in treatment, the provider will provide **quarterly progress reports** to the BPT and P&CSD until the parolee:

- Successfully completes the treatment program,
- Is removed from the program due to unamenability,
- Commits subsequent violations of parole while in treatment that results in return to custody, or
- Absconds parole.

If a parolee is referred to a local county assessment center by P&CSD and fails to report as directed, the AOR will ensure the violation is handled in accordance with existing violation disposition procedures.

The quarterly progress reports shall also be filed on the left side of the field file. The parole agent may have collateral contact with the Prop 36 treatment providers; however, parole agents have no mandatory reporting requirements to Prop 36 county assessment/treatment providers.

### **TRANSFERRING PROP 36 CASES TO PROP 36 AGENTS:**

The P&CSD is requesting that the BPT's position authority be transferred to CDC. P&CSD plans to establish parole agents with the new resources. Specific parole districts will have designated Prop 36 parole agents who will supervise parolees that are in Prop 36 treatment. For those cases in Prop 36 treatment that are in a parole district with a Prop 36 parole agent, the following transfer procedure will apply:

- The AOR refers the Prop 36 eligible parolee to the appropriate assessment center.
- The AOR receives notification from the designated assessment center that the referred parolee has arrived at the facility.
- The AOR contacts the Prop 36 agent to verify transfer availability.
- The AOR prepares a Transfer Investigation Request/Travel Permit/Interstate Form I/OBIS Notification form (CDC 1233) and Activity Report (CDC 1502) with the appropriate transfer information.
- The AOR transfers the case to the designated Prop 36 parole agent.
- The Prop 36 parole agent assumes all supervision responsibilities of the transferred case.

### **PROP 36 CASES ON NON-SPECIALIZED CASELOADS:**

Parole Agents carrying Prop 36 cases on non-specialized caseloads are only required to perform casework responsibilities as they apply to non-Prop 36 cases.

### **PROP 36 PAROLEE'S THAT ABSCOND:**

- If a parolee has been assigned to the Prop 36 caseload, and becomes a parolee-at-large, the Prop 36 agent is responsible for submitting the parolee-at-large report.
- The Prop 36 agent retains the parolee on their caseload in parolee-at-large status, until the parolee-at-large has been arrested and the parole violation(s) have been acted on by the BPT.

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### **RETURNING PROP 36 CASES TO THE FEEDER UNIT (S):**

- After a parolee assigned to a Prop 36 caseload either successfully completes the assessed drug treatment, or has become a revoked case in return to custody status, the Prop 36 parole agent completes a CDC1233 and CDC1502.
- The Prop 36 parole agent transfers the case back to the feeder parole unit.

### **FAMILIARIZATION WITH PROP 36 POLICY AND PROCEDURES:**

Parole agents shall use one 7K hour to familiarize themselves with the policy and procedures for Prop 36. Subsequent to the familiarization, parole agents shall use one additional 7K hour for questions and answers with the US at a unit meeting to ensure consistent application of Prop 36. The unit meeting shall be held prior to October 1, 2002.

If you have any questions, please contact Craig Toni, Parole Agent III, Field Operations Support Program, at (916) 323-4074.

*Original signed by*

RICHARD A. RIMMER  
Deputy Director  
Parole and Community Services Division

Attachments

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cc: Peter Jensen, Youth and Adult Correctional Agency  
Edward Alameida, Director of Corrections  
David Tristan, Chief Deputy Director  
Marvin Speed, BPT  
Edward McNair, BPT  
Joe Ossmann, BPT  
Sharon Jackson, P&CSD Headquarters  
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